IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 348 of 1999

with

CRIMINAL REVISION APPLICATION No 374 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARSHOTTAM MANILAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 348 of 1999
MR AY PATHAN for Petitioner
Mr.M.A.Bukhari, A.P.P. for Respondent No. 1
MR HARESH C PATEL for Respondent No. 2

2. Criminal Revision ApplicationNo 374 of 1999
Mr.M.A.Bukhari, A.P.P. for Petitioner
MR HARESH C PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 05/09/2000

ORAL COMMON JUDGEMENT

1. These two criminal Revisions challenging the same order of the Addl. Sessions Judge, Ahmedabad (Rural) at Gandhinagar, dated 24.5.1999 can be disposed of by a common order.

2. Criminal Revision Application No.348 of 1999 was filed by the complainant, namely, the first informant, who is father of the prosecutrix. The second revision No.374 of 1999 has been filed by the State of Gujarat challenging the same order.

3. Shri M.A.Bukhari, learned A.P.P. for the State has been heard and the impugned order has been examined. He has also brought to my notice the statement of the prosecutrix.

4. The request of the prosecutor before the Addl. Sessions Judge was that additional charge under Section 376 Indian Penal Code be framed against the accused Dharmendrakumar Tejpal Shah. None has appeared on his behalf though he has been served. This application of the prosecution was rejected by the learned Addl. Sessions Judge on the ground that contradictory stand has been taken by the prosecution and since the evidence of the prosecution was being recorded there was no justification for addition or alteration of the charge and if the charge is added or altered it will cause prejudice to the accused. With this observation the application for framing of additional charge was rejected by the Court below.

5. It is clear from the impugned order that the learned Court below has absolutely no idea of Section 216 of the Code of Criminal Procedure nor the learned Addl. Sessions Judge has taken care and pains to go through the provision of Section 216 Cr.P.C.

6. Section 216(1) Cr.P.C. provides that any court may alter or add to any charge at any time before judgment is pronounced. It is, therefore, clear from this provision that any court including the Court of Sessions Judge or Addl. Sessions Judge is empowered to add or alter any charge. It is further clear that such addition or alteration to the charge can be done by such court at any time before the Judgment is pronounced.

Consequently if the request was made for addition of charge when the prosecution evidence was being adduced it could not be said that addition or alteration of the charge was prohibited u/s. 216(1) Cr.P.C. Sub.Section 2 of Section 216 provides that every such alteration or addition shall be read and explained to the accused.

7. So far as prejudice to the accused is concerned the Legislature has taken care in enacting Sub. Sections 3 & 4 of Section 216 Cr.P.C. Sub.Section 3 of Section 216 provides that if the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge. So, here the Legislature never intended that on grounds of prejudice to the accused addition or alteration in the charge shall not be made. On the other hand it laid down procedure how the trial is to be conducted and how the charge is altered or added before the Judgment is pronounced. Sub.Section 4 of Section 216 further provides that if the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary. Consequently here also permitting altering and addition of charge is not prohibited rather the discretion is to proceed to try the accused as de-novo trial or the Court can adjourn the trial for such period as it may think necessary. Thus, examining the scheme under Section 216 Cr.P.C. as a whole I do not find any substance in the reasoning of the Court below that permitting addition or alteration of charge is prohibited before the pronouncement of judgment or alteration of charge or addition of charge can simply be refused because such alteration is likely to cause prejudice to the accused.

8. So far as material for framing of charge is concerned shri Bukhari has pointed out from the statement of the prosecutrix that she was kept for 3 days at one place by the accused and was constantly raped by him. She further stated in Para : 4 that thereafter the accused took her to another place where also he stayed with her and raped her for 3 days. Besides this he has pointed out that there is some evidence from the Forensic Science Laboratory to primafacie indicate evidence for proceeding against the accused u/s. 376 I.P.C. As such

these materials furnish prima facie ground for proceeding against the accused u/s. 376 I.P.C. Learned Addl. Sessions Judge was therefore obviously in error in refusing to add charge u/s. 376 I.P.C.

9. In the result both the revisions succeed and are hereby allowed. The impugned order dated 24.5.1999 are set aside. The learned Addl. Sessions Judge, Ahmedabad (Rural), Gandhinagar, is directed to frame charge u/s. 376 I.P.C. as additional charge against the accused and shall try him in accordance with the provisions contained in Section 216, Sub.Sections 3 & 4 Cr.P.C.

sd/-

Date : September 05, 2000 (D. C. Srivastava, J.)

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